

6/29/2012

Robyn Ast-Gmoser

From: Katz, Clifford [CKatz@KelleyDrye.com]
Sent: Thursday, June 07, 2012 10:51 AM
To: Burkoff, David
Cc: Jacob, Beth; Hochstetler, Douglass; Wood, Stephen; McVary, Barrett; Mormile, Myra; SBraerman@bayardlaw.com; 'kconfoy@sternslaw.com'; 'mmatterer@morrisjames.com'; Kratz, Timothy H.; 'Florence, Robert L.'; Gary Hood; Robyn Ast-Gmoser; Mark Deming; Manspeizer, David A.; Bassett, David; Noyes, Christopher; jblumenfeld@mnat.com; klouden@mnat.com; JHeaney@MNAT.com; Ying, Jennifer; lwalsh@connellfoley.com; Patrick J. Murphy III; Rukhsanah L. Lighari; 'Trivedi, Somil B.'
Subject: RE: Sciele v. Lupin, No. 09-0037

Dave:

I will not respond to everything you say in your letter, but would be happy to discuss by phone, except to say that you make an unfounded allegation that Lupin made an "insinuation" about Andrx's counsel. As I explained during our meet and confer, the harm to Lupin if the information falls in the hands of its generic competitor is greater than if it is disclosed to its brand competitor.

Additionally, Shionogi states that it will not disclose Lupin's customer-specific information to Andrx "for the time being." Please clarify what this means.

Cliff

From: Trivedi, Somil B. [mailto:Somil.Trivedi@wilmerhale.com]
Sent: Thursday, June 07, 2012 10:01 AM
To: Katz, Clifford
Cc: Jacob, Beth; Hochstetler, Douglass; Wood, Stephen; McVary, Barrett; Mormile, Myra; SBraerman@bayardlaw.com; 'kconfoy@sternslaw.com'; 'mmatterer@morrisjames.com'; Kratz, Timothy H.; 'Florence, Robert L.'; 'Gary E. Hood'; 'RAstGmoser@Polsinelli.com'; Mark Deming; Manspeizer, David A.; Bassett, David; Noyes, Christopher; Burkoff, David; jblumenfeld@mnat.com; klouden@mnat.com; JHeaney@MNAT.com; Ying, Jennifer; lwalsh@connellfoley.com; Patrick J. Murphy III; Rukhsanah L. Lighari
Subject: Sciele v. Lupin, No. 09-0037

Counsel:

Please see the attached letter.

Thanks,

Somil

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Please consider the environment before printing this email.



6/29/2012



Gary E. Hood

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June 7, 2012

Exhibit

B

ELECTRONIC MAIL

Clifford Katz, Esq.
Kelley Drye & Warren LLP
101 Park Avenue
New York, NY 10178

Re: Sciele Pharma, Inc., et al. v. Lupin Ltd., et al., C.A. No. 09-037-RBK-JS

Dear Cliff:

I understand that, on a meet-and-confer telephone conference on June 5, 2012, Lupin offered to produce certain damages-related documentation to Shionogi counsel only, to specifically exclude production to/access by Andrx counsel. Although I was not personally on the call, on behalf of myself and my entire team, Lupin's proposal is highly offensive.

It is my understanding that Lupin offered no specific reason for refusing to produce the subject documentation to Andrx counsel. The most Lupin suggested on the call was that there is always a risk that information could be improperly disclosed, and on that basis Lupin refuses to permit Andrx counsel to have access to the documents. Your email earlier today, suggesting as a basis for your proposal that "the harm to Lupin if the information falls in the hands of its generic competitor is greater than if it is disclosed to its brand competitor," is unpersuasive.

Lupin's proposal is without any legitimate basis, and is unjustified. As you know, the Court entered a protective order in this case many months ago. That order sets forth, in detail, provisions to ensure the protection of sensitive documents and information. The order specifically permits Lupin to designate certain documents as accessible only by outside counsel. Andrx counsel has and will continue to comply with that order and such provisions, and neither Lupin nor any other party has to my knowledge made any allegation otherwise.

Beyond a host of logistical problems that your proposal would create, it suggests that you do not believe Andrx counsel to be trustworthy. We do not take lightly such allegations, whether made directly or indirectly. If you have any specific reason(s) or justification for why you believe the subject documentation would be at some increased risk of disclosure if produced to Andrx counsel even if designated for counsel access only per the protective order, provide that to me immediately. Assuming that you do not, agree to produce the documents to Andrx counsel

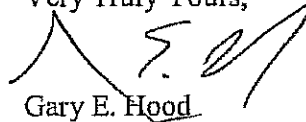
Chicago | Dallas | Denver | Edwardsville | Jefferson City | Kansas City | Los Angeles | New York
Overland Park | Phoenix | St. Joseph | St. Louis | Springfield | Topeka | Washington, DC | Wilmington
In California, Polsinelli Shughart LLP.

Polsinelli
Shughart

Clifford Katz, Esq.
June 7, 2012
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on the same basis that you have agreed to produce the documents to Shionogi counsel. Failing your agreement, we intend to take this matter up with the Court.

Very Truly Yours,



Gary E. Hood

Cc: Counsel of Record

6/29/2012

Robyn Ast-Gmoser**From:** Katz, Clifford [CKatz@KelleyDrye.com]**Sent:** Friday, June 08, 2012 12:56 PM**To:** Gary Hood

Cc: 'jblumenfeld@mnat.com'; 'klouden@mnat.com'; 'jying@mnat.com'; 'rkirk@bayardlaw.com'; 'sbrauerman@bayardlaw.com'; 'JHeaney@mnat.com'; 'somil.trivedi@wilmerhale.com'; McVary, Barrett; Mormile, Myra; 'rherrmann@morrisjames.com'; 'mmatterer@morrisjames.com'; Hochstetler, Douglass; 'tkratz@mcguirewoods.com'; 'rflorence@mcguirewoods.com'; 'kconfoy@sternslaw.com'; 'christopher.noyes@wilmerhale.com'; Jacob, Beth; 'david.bassett@wilmerhale.com'; 'david.manspeizer@wilmerhale.com'; 'lwalsh@connellfoley.com'; 'rlighari@connellfoley.com'; 'lwalsh@connellfoley.com'; 'rlighari@connellfoley.com'; Robyn Ast-Gmoser; Mark Deming; Linda Marrs

Subject: RE: Sciele Pharma, Inc., et al. v. Lupin Ltd., et al., C.A. No. 09-037-RBK-JS

Gary:

We are making the same argument we have been making since October. Despite trustworthy counsel and protective orders, the risk of highly confidential information being inadvertently disclosed exists and is recognized by the courts and the FRCP. The information seemed more important to Shionogi than Andrx given that Andrx had not requested it and was not pursuing it. We were attempting to alleviate our client's concerns by producing the information to Shionogi, which is not our client's direct generic competitor, but if that compromise is not acceptable, we will have to reconsider.

Cliff

From: Linda Marrs [mailto:LMarrs@Polsinelli.com]**Sent:** Thursday, June 07, 2012 4:34 PM**To:** Katz, Clifford

Cc: 'jblumenfeld@mnat.com'; 'klouden@mnat.com'; 'jying@mnat.com'; 'rkirk@bayardlaw.com'; 'sbrauerman@bayardlaw.com'; 'JHeaney@mnat.com'; 'somil.trivedi@wilmerhale.com'; McVary, Barrett; Mormile, Myra; 'rherrmann@morrisjames.com'; 'mmatterer@morrisjames.com'; Hochstetler, Douglass; 'tkratz@mcguirewoods.com'; 'rflorence@mcguirewoods.com'; 'kconfoy@sternslaw.com'; 'christopher.noyes@wilmerhale.com'; Jacob, Beth; 'david.bassett@wilmerhale.com'; 'david.manspeizer@wilmerhale.com'; 'lwalsh@connellfoley.com'; 'rlighari@connellfoley.com'; 'lwalsh@connellfoley.com'; 'rlighari@connellfoley.com'; Gary Hood; Robyn Ast-Gmoser; Mark Deming

Subject: Sciele Pharma, Inc., et al. v. Lupin Ltd., et al., C.A. No. 09-037-RBK-JS

Mr. Katz,

The attached correspondence is sent on behalf of Gary E. Hood, Esq.

Thank you.

Linda Marrs

Legal Administrative Assistant
to Gary E. Hood, Esq.
POL SINELLI SHUGHART PC
161 N. Clark Street, Ste. 4200
Chicago, Illinois 60601
Telephone: (312) 873-3662
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Exhibit**C**

6/29/2012